



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.06.2018
CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (NPD) No.2096 of 2017
and
CMP (MD) No.10447 of 2017

K.Natarajan

... Petitioner

-vs-

1.Tirunelveli District, Sivagiri Taluk,
Sivagiri Village (Sundaresapuram) Malaikovil Street,
Road No.11 (Near Taluk Office) Kadappaiswamy
Sri. Paramahansa Sachidhanandha Yohiswarar's
Prime follower Nithiya Mangala akanda paripoorana
Sachidhanandha payi Ramamoorthy Swamy
Sri.Paramahansa Nithiyanandha pirama muniswara,
1/61 King Charles Payanigal Company
Sr. Swamy pension Howildar Maravarchiya Virthi
Pandia Thevar @ Vairamuthuswamy odukkam through
its present Trustee K.Raja

2.Thangam @ Thangamalai

... Respondents

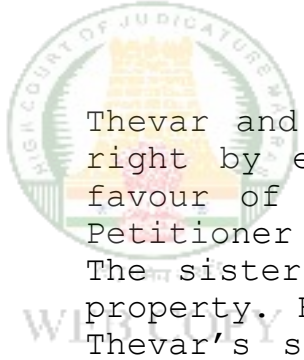
PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., to set aside the Fair and Decreetal Order passed in E.A.No.52 of 2015 in E.P.No.02 of 2009 in O.S.No.36 of 2002, dated 01.08.2017, on the file of the District Munsif Cum Judicial Magistrate Court, Sivagiri.

For Petitioner	: Mr.F.X.Eugene
For Respondents	: Mr.V.Raghavachari (for R1) Mr.S.Sivakumar (for R2)

O R D E R

The Petitioner has filed this Civil Revision petition under Section 115 of C.P.C., to set aside the fair and decreetal order passed in E.A.No.52 of 2015 in E.P.No.2 of 2009 in O.S.No.36 of 2002 dated 01.08.2017 on the file of the learned District Munsif Cum Judicial Magistrate, Sivagiri.

2.It is the case of the Revision Petitioner that he is a 3rd party to the execution proceedings in E.P.No.2 of 2009. He filed an application in E.A.No.52 of 2015 under Section 47(3)(b) of CPC praying to dismiss the Execution Petition. It is his case that the Petition mentioned property and its Northern side property originally belonged to one Ganesa Thevar and his Wife Ganapathy ammal. The 1st Respondent herein is the son of the above said Ganesa



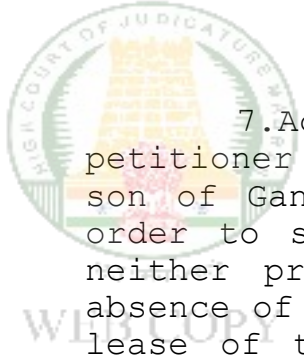
Thevar and Ganapathy ammal. The 1st Respondent had relinquished his right by executing a registered release deed dated 01.05.1978 in favour of his parents. Thereafter the property was leased to the Petitioner herein by K.G.Durai who is also the son of Ganesa Thevar. The sisters of K.G.Durai also released their right over the said property. By virtue of the said release deed the above said Ganesa Thevar's son K.G.Durai became the absolute owner of the Petition mentioned property and he leased the same to the Revision Petitioner for 99 years on 23.06.2005. Thereafter the Petitioner herein is in continuous possession and enjoyment over the same without any interference from anybody and doing his business. While so, the 1st Respondent herein sent advocate notice to the Petitioner stating that the lease deed obtained by the Petitioner from K.G.Durai is not valid. Thereafter the 1st Respondent declared him as Trustee of Pandia Thevar @ Vairamuthusamy and filed a suit in O.S.No.82 of 2009. There is no order passed against the Revision Petitioner in the said suit and the same is pending. However, he filed execution Petition on the strength of the decree obtained in O.S.No.36 of 2002 wherein he has mentioned the entire extent of property in the scheduled of property. The E.P is liable to be dismissed as against 3.3/4 cent on the Southern part of the property mentioned in the E.P Petition in which the Petitioner is having his Welding workshop. Hence the delivery order made in E.P.No.2 of 2002 dated 06.02.2015 is liable to be set aside.

3. Resisting the said application, the 1st Respondent herein contented that the property comprised in Punja S.No.1082/2 measuring an extent of 7.41 cents absolutely belongs to the 1st Respondent Trust and the Revision Petitioner has right over the same. He has no right to file the petition as against the private Trust. The petition mentioned property is not belonged to the family of K.G.Durai. Already the right of the 1st Respondent's Trust was declared in A.S.No.48 of 2005. Hence, he prayed to dismiss the application filed under Section 47(3)(b) of CPC by the revision petitioner.

4. The lower Court after hearing the arguments on either side dismissed the E.A. filed by the Revision Petitioner holding that the Petitioner has not substantiated his claim by filing relevant documents.

5. I heard Mr.F.X.Eugene, learned counsel for the petitioner, Mr.V.Raghavachari, learned counsel for the 1st respondent and Mr.S.Sivakumar, learned counsel for the 2nd respondent and perused the entire materials available on record.

6. The contention of the learned counsel for the revision petitioner that the petitioner herein was given lease of the property mentioned in the execution petition measuring to an extent of 3.3/4 cent in survey number 1082/2 on the northern side in which he is having his welding work shop.



7. According to the learned counsel for the petitioner, the petitioner has obtained the said lease from one K.G. Durai who is the son of Ganesha Thevar by virtue of lease deed 23.06.2005. But in order to substantiate the said contention the revision petitioner neither produced any document nor adduced oral evidence. In the absence of any proof to show that the revision petitioner was having lease of the property in survey No.1082/2 to an extent of 3.3/4 cent, he cannot file the said petition claiming right over the property. Therefore the learned judge is right in dismissing the application filed by the revision petitioner under Section 47(3) (b) of C.P.C. and this Court do not find any irregularity or infirmity in the order impugned in this Civil Revision Petition.

8. That apart the learned counsel for the respondent herein produced the judgment and decree made in S.A.No.143 of 2009 dated 06.08.2014 which is arising out of the judgment and decree in A.S.No. 48 of 2005 dated 23.10.2008 on the file of the learned Sub Court, Sankarankovil. The perusal of the said judgment disclose that the subject matter of the property in the above execution petition has been dealt within in the said judgment and this Court in the above second appeal held that the suit property belong to the plaintiff (i.e) the 1st respondent herein. The appellant in S.A.No.143 of 2009, filed SLP before the Hon'ble Supreme Court and the same was also dismissed.

9. In the view of the above, the revision petitioner cannot have any right over the petition mentioned property and the same has already has been declared by this Court which was confirmed by the Hon'ble Supreme Court.

10. For the foregoing reason, I do not find any merit in this Civil Revision Petition and the order of the Court below is legally sound and the same is liable to be confirmed and accordingly it is confirmed.

11. In the result, this Civil Revision Petition is dismissed and the Fair and Decretal Order made in E.A.No.52 of 2015 in E.P.No.2 of 2009 in O.S.No.36 of 2002 dated 01.08.2017, on the file of the learned District Munsif Cum Judicial Magistrate, Sivagiri, is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To
<https://heservices.ecourts.gov.in/hcservices/>
 The District Munsif Cum Judicial Magistrate,
 Sivagiri.



+1cc to M/S.V.Raghavachari, Advocate SR.No. 68430

+1cc to M/S.F.X.Eugene, Advocate SR.No. 68349

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order made in
C.R.P. (MD) (NPD) No.2096 of 2017
and
CMP (MD) No.10447 of 2017
14.06.2018

VSV

JM/PN/SAR 4/17.07.2018/4P/4C